

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

ALA EMET
828 Red Lion Road, Apartment C25
Philadelphia, PA 19115,

Plaintiff

v.

BJ'S WHOLESALE CLUB, INC.
d/b/a BJ's Wholesale Club
2044 Red Lion Road
Philadelphia, PA 19115,

Defendant.

CIVIL ACTION NO. 2:21-cv-04262

**ANSWER TO COMPLAINT,
AFFIRMATIVE DEFENSES,
RESERVATIONS, REQUEST FOR
ALLOCATION, DEMAND FOR
STATEMENT OF DAMAGES, JURY
DEMAND, DESIGNATION OF TRIAL
COUNSEL, CERTIFICATIONS**

Defendant, BJ's Wholesale Club, Inc. (hereinafter "Defendant"), by and through its attorneys, Morrison Mahoney LLP, by way of Answer to the Complaint hereby says:

1. Defendant neither admits nor denies the allegation contained in this paragraph but leaves plaintiff to her proofs.
2. Defendant neither admits nor denies the allegation contained in this paragraph but leaves plaintiff to her proofs.
3. Defendant denies the allegation contained in this paragraph.
4. Defendant denies the allegation contained in this paragraph.
5. Defendant neither admits nor denies the allegation contained in this paragraph but leaves plaintiff to her proofs.
6. Defendant denies the allegation contained in this paragraph.
7. Defendant denies the allegation contained in this paragraph.
8. Defendant denies the allegation contained in this paragraph.
9. Defendant neither admits nor denies the allegation contained in this paragraph but leaves plaintiff to her proofs.

10. Defendant neither admits nor denies the allegation contained in this paragraph but leaves plaintiff to her proofs.

11. Defendant neither admits nor denies the allegation contained in this paragraph but leaves plaintiff to her proofs.

12. Defendant neither admits nor denies the allegation contained in this paragraph but leaves plaintiff to her proofs.

13. Defendant denies the allegation contained in this paragraph.

14. Defendant denies the allegation contained in this paragraph.

15. Defendant denies the allegation contained in this paragraph.

16. Defendant denies the allegation contained in this paragraph.

17. Defendant denies the allegation contained in this paragraph.

18. Defendant denies the allegation contained in this paragraph.

19. Defendant denies the allegation contained in this paragraph.

WHEREFORE, defendant demands judgment, dismissing the Complaint, and any and all claims against it with prejudice, along with costs, attorneys' fees, interest and all other relief deemed appropriate by this Court.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

Plaintiff is not entitled to any relief.

SECOND AFFIRMATIVE DEFENSE

Plaintiff is barred from relief by the Unclean Hands Doctrine.

THIRD AFFIRMATIVE DEFENSE

The Complaint fails to state a claim upon which relief may be granted.

FOURTH AFFIRMATIVE DEFENSE

Defendant did not violate any duty owed to plaintiff under common law, case law, statutes, regulations, ordinances, or standards of care.

FIFTH AFFIRMATIVE DEFENSE

Defendant is free from any and all negligence.

SIXTH AFFIRMATIVE DEFENSE

Defendant's conduct was not the proximate cause of plaintiff's alleged damages.

SEVENTH AFFIRMATIVE DEFENSE

Defendant is not a proper party under jurisdiction, venue and service grounds.

EIGHTH AFFIRMATIVE DEFENSE

Defendant is immune from any liability by virtue of the applicable statutes of the Commonwealth of Pennsylvania and the United States.

NINTH AFFIRMATIVE DEFENSE

At all times alleged, defendant conducted itself in full compliance with all applicable federal, state and local laws, statutes, ordinances, regulations, standards of care, common law and case law relative to the within subject matter which said compliance bars the claims asserted against it.

TENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by the Entire Controversy Doctrine.

ELEVENTH AFFIRMATIVE DEFENSE

Plaintiff is barred from recovery based upon the Doctrines of Promissory, Equitable and/or Judicial Estoppel, as well as Laches.

TWELFTH AFFIRMATIVE DEFENSE

Defendant acted reasonably and properly under the circumstances involved herein.

THIRTEENTH AFFIRMATIVE DEFENSE

Defendant reserves the right to move for a dismissal of the Complaint.

FOURTEENTH AFFIRMATIVE DEFENSE

Plaintiff lacks standing to bring this matter and the matter should be dismissed.

FIFTEENTH AFFIRMATIVE DEFENSE

Defendant is not in breach of any contractual, warranty, fiduciary and/or loyalty duties.

SIXTEENTH AFFIRMATIVE DEFENSE

Plaintiff's negligence was the proximate cause of their damages, which are denied, barring any recovery against this defendant. Specifically, she failed to take proper precautions to ensure their own safety.

SEVENTEENTH AFFIRMATIVE DEFENSE

Defendant is not liable as it is not responsible for the acts, omissions and/or negligence of third parties not under its control.

EIGHTEENTH AFFIRMATIVE DEFENSE

This matter must be dismissed for plaintiff's failure to name indispensable parties.

WHEREFORE, defendant demands judgment, dismissing plaintiff's Complaint, and any and all claims against it with prejudice, along with costs, attorneys' fees, interest and all other relief deemed appropriate by this Court.

RESERVATIONS

1. The answering defendant reserves its rights to rely upon any affirmative defenses or separate defenses pleaded by any other party hereto, except to the extent that such defenses attempt to impose responsibility or liability upon the answering defendant.
2. Defendant reserves the right to apply for relief under Rule 11 as appropriate.

WHEREFORE, defendant demands judgment, dismissing plaintiff's Complaint, and any and all claims against it with prejudice, along with costs, attorneys' fees, interest and all other relief deemed appropriate by this Court.

REQUEST FOR ALLOCATION

If any party settles prior to verdict, this defendant will seek an allocation by the fact finder of the percentage of negligence and/or other liability against each settling party. This defendant will seek this allocation, whether or not this defendant has formally filed a cross-claim against the settling defendants. This defendant will rely upon the direct examination and cross-examination of plaintiff's fact and/or expert witnesses, and any and all other witnesses offered by any party at the time of trial, in support of this allocation and specifically reserves the right to call any and all such witnesses.

DEMAND FOR STATEMENT OF DAMAGES

PLEASE TAKE NOTICE that the undersigned demands that within five (5) days of service of this responsive pleading, plaintiff serve upon this office a written statement of the amount of damages claimed in the above-entitled action.

JURY DEMAND

Defendant hereby demands trial by jury on all issues.

DESIGNATION OF TRIAL COUNSEL

Please be advised that Neil A. Tortora, Esq., is hereby designated as trial counsel on behalf of defendant in the above-captioned matter.

CERTIFICATION OF FILING AND SERVICE

I hereby certify that the within pleading was filed with the Clerk of the District Court in the captioned District and served on all known counsel of record within the proper time period and/or any allowable extensions thereof.

LOCAL RULE 11.2 CERTIFICATION

I certify to the best of my knowledge that this matter is not the subject of any other action pending in any Court or any arbitration proceeding; and that no other action or arbitration proceeding is presently contemplated by the answering defendant; and that defendant does not presently know of any other parties who should be joined in this action.

MORRISON MAHONEY LLP

BY: /s/ Neil A. Tortora

Neil A. Tortora, Esq.

I.D.# 318258

ntortora@morrisonmahoney.com

Morrison Mahoney LLP

Waterview Plaza

2001 U.S. Highway 46, Suite 200

Parsippany, NJ 07054

Attorneys for Defendant,

BJ's Wholesale Club, Inc.